

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 09-50779

Chapter 7

Dennis E. Hecker,

Debtor.

**NOTICE OF MOTION AND MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT AND FOR EXPEDITED HEARING**

TO: ENTITIES SPECIFIED IN LOCAL RULE 9013-3

1. Randall L. Seaver, the Chapter 7 Trustee ("**Trustee**") herein, moves the Court for the relief request below and gives Notice of hearing herewith.

2. The Court will hold a hearing on this motion at 2:00 p.m. on April 7, 2010 Courtroom No. 8 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard. Under applicable rules, any objection must be in writing, be delivered to the Trustee and the United States Trustee. Because of the expedited nature of this hearing, the Trustee will not object, as to timeliness, to any response. **UNLESS A RESPONSE IS TIMELY SERVED AND FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1334, Fed.R.Bankr.P. 5005, and Local Rule 1070-1. The petition commencing this chapter 7 case was filed on June 4, 2009. The case is now pending in this court.

4. This Motion arises under 11 U.S.C. §554, Fed.R.Bankr.P. 9019, Local Rule 9019-1 and is filed under Local Rules 9013-2 and 9013-5. The Trustee seeks approval of the Settlement Agreement between the Trustee and Tamitha Hecker. The Settlement Agreement is attached hereto as Exhibit A.

5. The Settlement Agreement was the result of a mediation conducted with the assistance of the Honorable Gregory F. Kishel on March 5, 2010.

6. The Trustee believes the settlement is in the best interest of creditors of this estate.

7. Expedited approval of the proposed settlement is requested as Tamitha Hecker has noted a need for living expenses and indicated that the funds generated by this settlement may be her only source of capital.

8. Pursuant to Local Rule 9013-2(c), the Trustee gives notice that he may, if necessary, testify at the hearing regarding the proposed sale.

WHEREFORE, the Trustee requests an Order of the court:

1. Granting the Trustee's motion for expedited hearing.
2. Granting the Trustee's motion for approval of the Settlement Agreement.

**LEONARD, O'BRIEN, SPENCER,
GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: March 18, 2010

By: _____
Matthew R. Burton
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030

Attorneys for Randall L. Seaver, Trustee

VERIFICATION

I, Randall L. Seaver, Trustee for the Bankruptcy Estate of Dennis E. Hecker named in the foregoing Notice of Hearing and Motion for Approval of Settlement Agreement and Expedited Hearing declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on March 18, 2010

/e/ Randall L. Seaver

Randall L. Seaver, Trustee

418095

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

Tamitha Hecker,

Adv. 10-5001

Plaintiff,

vs.

Randall L. Seaver,

Defendant.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("**Agreement**") is entered into between Tamitha Hecker and Randall L. Seaver, the (collectively referred to as the "**Parties**").

WHEREAS, on January 12, 2010, Tamitha Hecker commenced the above-captioned adversary proceeding seeking a declaratory judgment and abandonment of money and personal property;

WHEREAS, Randall L. Seaver alleged various claims against Ms. Hecker for avoidance of various transfers made within the two years prior the filing;

WHEREAS, on March 5, 2010, the Parties mediated this matter with the Honorable Gregory F. Kishel, U.S. Bankruptcy Judge; and

EXHIBIT A

WHEREAS, as a consequence of a full-day mediation session, the Parties resolved their claims against each other. The terms of the settlement were memorialized on the record at the conclusion of the mediation.

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants undertaken herein and for other good and valuable consideration, the parties make the following:

STIPULATION

1. Any and all jewelry owned by Tamitha Hecker shall remain property of Ms. Hecker free and clear of any claims of the Trustee or the estate, except for a Rolex watch given to Ms. Hecker by the debtor in July 2008. The Rolex watch shall be turned over to the Trustee within ten days of the approval of the settlement and shall become property of the bankruptcy estate. The jewelry shall not be property of the bankruptcy estate and the Trustee abandons any interest that the estate may have in the jewelry.

2. Any and all monies held by Ms. Hecker as of the commencement of the debtor's bankruptcy case including monies held in her safety deposit box or Ms. Hecker's bank accounts shall be and remain the property of Ms. Hecker free and clear of any claims of the Trustee and the estate. The cash shall not be property of the bankruptcy estate and the Trustee abandons any interest that the estate may have in the cash.

3. The Trustee and the estate shall keep the \$17,700 seized at the home in Cross Lake, Minnesota, when the search warrants were executed on or about June 17, 2009.

4. The personal property and all funds received from the sale of the personal property in all homes whether titled in the names of business entities or in the name of the debtor shall be property of the estate, with the exception of \$10,000. The \$10,000 shall be paid to Ms. Hecker within ten days of approval of the settlement.

5. The estate shall release any interest in the Hublot watch given to the debtor's son within the year prior to filing.

6. Ms. Hecker shall release any interest in any of the real or personal, property held by the debtor or in the name of any of the debtor's business entities, except as provided herein, as of the date of the bankruptcy case.

7. As to the large piece of glass artwork referenced in the Trustee's preliminary answer and in mediation (which the parties referred to as the "disc"), the artwork shall be turned over to the Trustee to liquidate upon approval of the settlement. The proceeds from the sale, after deducting the costs of liquidation, shall be divided equally among the Parties. Any and all attorneys' fees and costs in connection with the sale shall be borne by the estate. The Trustee shall pay Ms. Hecker within ten days after consummation of the sale of the glass artwork.

8. The real property legally described as Timbers Club at Snowmass Unit: S6 DESC: Parking Space, Parcel No. 273301406036, Snowmass Village, Colorado, shall be sold by the Trustee. The net proceeds from the sale, after deducting any costs of liquidation or unpaid assessments, shall be divided between the Parties. The estate shall retain 60 percent of the net proceeds and Ms. Hecker shall receive 40 percent of the net proceeds. Any and all attorneys' fees and costs in connection with the sale shall be borne by the estate. The Trustee shall pay Ms. Hecker within ten days after the sale of the Colorado real property.

9. Ms. Hecker releases any and all claims or interest in the income tax refunds that may be subject to the estate's interest as of the time of bankruptcy filing.

10. The automatic stay shall be modified so as to permit Ms. Hecker to liquidate her claims in the pending dissolution matter.

11. The estate releases any interest in Ms. Hecker's vehicles, the 2008 Mini Cooper and the 2008 Cadillac Escalade.

12. Ms. Hecker will provide sworn testimony in the form of an affidavit and through a bankruptcy rule 2004 examination for the purpose of establishing her assets as of June 4, 2009 and any transfers of assets by her in the year prior to filing bankruptcy. It is assumed, as part of this settlement agreement, that the information to be provided under oath will be consistent with that formerly represented by Ms. Hecker. This settlement agreement will not release any claims possessed by the Trustee against Ms. Hecker which arise from or relate to any materially false information (material meaning a difference in excess of \$5,000) provided in the aforementioned affidavit or examination. Any assets having a value of \$5,000 or more in excess of that disclosed by Ms. Hecker shall be property of the estate and Ms. Hecker shall have no interest in those assets.

13. Ms. Hecker shall continue to cooperate with the Trustee and shall provide truthful testimony as reasonably necessary, without expense to the estate. To the extent permitted by the family court, Ms. Hecker shall share all financial information and filings made in that case with the Trustee.

14. The Trustee shall release any and all avoidance claims against Ms. Hecker, Becky Toevs Rooney and Edward F. Rooney.

15. This resolution does not affect any personal or real property that may be discovered by the Parties in the future. The Parties reserve their respective rights and interest in the unscheduled or unknown assets.

16. If the settlement is not approved, the Trustee shall have ten days to answer the Complaint filed by Ms. Hecker.

17. Due to the financial hardship of Ms. Hecker, the Parties agreed that the Trustee shall move for the approval of the settlement on an expedited basis.

18. Except as provided for in this Agreement, the Parties do hereby, on behalf of themselves, agents, attorneys, heirs, successors and assigns, release, acquit, forever discharge each other and any agents, attorneys, heirs, successors and assigns, from any and all claims, demands or causes of action of any kind, nature or description whether arising in law or equity or upon contract or tort or under state or federal laws or otherwise, whether known or unknown, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected.

19. The undersigned, by execution hereof, state that they have reviewed this Agreement with their respective legal counsel, if any, and that they understand and fully agree to each, all, and every provision hereof, and hereby acknowledge receiving a copy hereof.

20. This Agreement shall be construed under the laws of the State of Minnesota and is subject to final approval of the United States Bankruptcy Court. If approval is not obtained, this Agreement shall become null and void.

21. This Agreement is valid if executed in counterparts which if read together constitute a fully executed Agreement.

22. It is specifically understood and agreed that the consideration recited herein is in full, final, and complete compromise, settlement, accord, and satisfaction of disputed claims; and there are no covenants, promises, or undertakings outside of this Agreement other than as specifically set forth herein.

Dated: March __, 2010

By _____
Randall L. Seaver, Trustee

Dated: March __, 2010

By _____
Tamitha Hecker

418343

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 09-50779

Chapter 7

Dennis E. Hecker,

Debtor.

**MEMORANDUM IN SUPPORT OF EXPEDITED MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT ON AN EXPEDITED BASIS**

ARGUMENT

I. EXPEDITED RELIEF

The Trustee believes that the Verified Notice of Hearing and Motion served and filed herewith demonstrates that expedited relief is appropriate pursuant to Local Rule 9006-1(e).

II. APPROVAL OF SETTLEMENT

Local Rule 9013-5 dictates that a memorandum is not required with respect to a motion to approve a settlement unless a “serious contest is anticipated.” The Trustee does not anticipate a serious contest to the subject settlement. However, the Trustee does believe that the Settlement Agreement is in the best interest of the estate and its creditors. Federal Rules of Bankruptcy Procedure 9019(a) provides, “On motion by the trustee in and after notice of a hearing, the court may approve a compromise or settlement.” The guiding principal for the Court's approval of a settlement is whether the settlement is in “the best interest of the estate.” *See In re A&C Properties*, 784 F.2d 1377, 1390 (9th Cir. 1986); *In re Hanson Indus., Inc.*, 88 B.R. 942, 946 (Bankr. D. Minn. 1988).

CONCLUSION

The Trustee requests that the Court:

1. Grant his request for expedited relief;
2. Grant the Trustee's request to approve the Settlement Agreement; and,
3. Award the Trustee such other relief as is just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: March 18, 2010

By _____
Matthew R. Burton, #210018
Attorney for Randall L. Seaver, Trustee
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402-1234
(612) 332-1030

418102

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2010, I caused the following documents:

Notice of Motion and Motion for Approval of Settlement Agreement and for Expedited Hearing, Memorandum in Support of Expedited Motion for Approval of Settlement Agreement on an Expedited Basis and Order (proposed)

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice pursuant to Local Rule 9006-1(a).

I further certify that I caused a copy of the foregoing documents to be mailed by first-class mail, postage paid, to the following:

SEE ATTACHED SERVICE LIST

Dated: March 18, 2010

/e/ Stephanie Wood

Stephanie Wood
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Minneapolis, MN 55402
(612) 332-1030

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BAXTER MN 56425

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SAINT PAUL MN 55104

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GREENWICH CT 06830

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80 SOUTH EIGHTH STREET
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ASPEN CO 81611

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BAYPORT MN 55003

CITY OF MEDINA
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HAMEL MN 55340

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No.: 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

ORDER

This case is before the court on the motion of Randall L. Seaver, trustee seeking an order authorizing approval of a settlement agreement.

Based on the motion and the file,

It is ordered:

1. Expedited relief is granted.
2. The trustee's motion for approval of the settlement agreement is granted.

Dated:
